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Home > Businesses > Help & Resources > Legal Library > Letter Rulings > Letter Rulings - By Year(s) > 1984 and Prior > 1983 Rulings >

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Select an area to search

Search

Letter Ruling 83-8: Deferred Compensation Plan

February 3, 1983

You request a ruling concerning the Massachusetts taxation of amounts deferred under a deferred compensation plan established for the employees of a private school which is exempt from federal income taxation under Internal Revenue Code Section 501(c)(3).

Under the Plan, the employer contracts to defer payment of a portion of the income of each participating employee. To provide a convenient method of setting aside sufficient of its assets to meet its future obligations under the Plan, the employer will establish and maintain a fund which will be invested in annuity contracts issued by the _____ Life Insurance Company. The obligation of the employer to make payments to the employee of the income which has been deferred is contractual. No trust is created by the Plan or the contracts and the employer's use of the funds is not restricted. An employee electing to participate in the Plan is a general creditor of the employer and has no preferred claim to the funds.

Distributions from the Plan may not be made prior to the employee's retirement unless he previously becomes disabled, terminates employment, dies or has severe financial difficulties.

The Plan is intended to defer recognition of federal gross income by an employee until the year in which the deferred compensation is paid or otherwise made available to the employee. Section 451 of the Code provides generally that items of gross income are included in gross income for the taxable year in which received by the taxpayer.

Massachusetts General Laws Chapter 62, Section 2 defines Massachusetts gross income as federal gross income with modifications not here relevant.

Income is subject to Massachusetts income tax withholding if it constitutes "wages" for federal withholding purposes and is taxable under General Laws Chapter 62.

Based on the foregoing, it is ruled that:

1. Monies deferred by employees participating in the Plan, so long as such monies are considered deferred for federal income tax purposes, are deferred for Massachusetts income tax purposes and are not subject to withholding of Massachusetts income taxes at the time such monies are deferred.
2. Monies deferred by employees participating in the Plan, so long as such monies are considered deferred for federal and Massachusetts income tax purposes, must not be included on Form W-2 (Wage and Tax Statement) as wages or other compensation paid.
3. Such monies deferred by employees participating in the Plan are includible in Massachusetts gross income and are subject to withholding of Massachusetts income taxes during the taxable year in which such monies are paid or otherwise made available to such employees, their beneficiaries or estates through retirement, termination, disability, death or severe financial hardship.

Very truly yours,

/s/Ira A. Jackson

Ira A. Jackson
Commissioner of Revenue

IAJ:JD/JJW:mf
LR 83-8